

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Misuse of Internet Protocol (IP) Captioned)	CG Docket No. 13-24
Telephone Service)	
)	
Telecommunications Relay Services and)	CG Docket No. 03-123
Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

To: The Commission

OPPOSITION TO SORENSON PETITION FOR RULEMAKING

Miracom USA, Inc.,¹ by counsel submits this opposition to Sorenson Communications, Inc.'s ("Sorenson") February 20, 2013, Petition for Rule Making ("Petition"), and shows the following.²

The Commission should deny Sorenson's Petition. It is a not so subtle attempt to distract the Commission from instituting permanent reforms to stem the abuse of the IP CTS service that Sorenson itself has been perpetrating. The problem besetting IP CTS does not lie in its rate setting mechanism. It lies with improper marketing schemes and Sorenson's intransigence in complying with long standing restrictions on promotion of relay service and recent Commission action to

¹ Miracom is an applicant for certification to provide Internet Protocol Captioned Telephone Service, having filed its application in November of 2011. As such, it has a vital interest in the rules governing IPCTS and in protecting the service from abuse.

² Miracom readily admits this opposition is submitted late. *See* Request For Comment On Petition For Rulemaking Filed By Sorenson Communications, Inc. Regarding Cost Recovery Methodology For Internet Protocol Captioned Telephone Service, DA 13-369 (Marach 8, 2013). To the extent necessary for Commission consideration, the Commission may treat this as an ex parte filing commenting on the Sorenson Petition, and or comments in the pending proceeding looking to establish rates for relay services. *See* Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate (May 1, 2013).

strengthen those safeguards. Adopting the recommendations of Sorenson's Petition would not fix IP CTS. It would instead junk a reasonable competition-based rate setting mechanism in favor of an arbitrary rate, apparently constructed to guarantee Sorenson dominance of the IP CTS market. For these reasons, Sorenson's Petition should be denied.

The Commission has struggled for more than a decade to set rates for relay services, with less than satisfactory results. The principal difficulty lies in the fact that consumers do not pay for TRS. Thus, TRS rates are not checked by market forces. Nor are TRS rates set via a tariffing process based on each provider's costs plus a reasonable rate of return. Rather, they are the result of an administrative process that sets one rate (or in the case of VRS, a set of tiered rates) applicable to all providers. Providers do not compete on price, but rather on service within the rate the Commission sets. Providers (and to a degree consumers) thus have an incentive to promote the highest possible rates, with the Commission serving as the principal check on rate levels. Providers complain of rate squeezes and enlist consumers to fight to keep rates high so consumers receive adequate service. Each rate setting season finds the Commission facing a barrage of pleadings, ex parte meetings, Congressional inquiries and consumer communications arguing over rates and rate elements. This process requires the Commission to delve into operational details of providers that it is ill-equipped to evaluate.

By way of illustration, the Commission approved VRS some 13 years ago, yet it has never approved a permanent VRS rate setting mechanism. *See, e.g., Telecommunications Relay Services* 21 FCC Rcd 8379 (2006). The current rate setting scheme has served to overcompensate Sorenson, the dominant VRS provider, by hundreds of millions of dollars. The Commission currently has ongoing an omnibus proceeding looking to restructure the VRS industry, including whether to set VRS rates through a competitive mechanism. *See generally* CG Docket No. 10-51; *Structure and*

Practices of the Video Relay Service Program, 25 FCC Rcd 8597 (2010). Doing so is problematic, however, if the Commission desires to afford consumers the benefits of service competition.

One area where relay service rates have been set by a competitive mechanism is Captioned Telephone Service. Using the Multistate Average Rate Structure (“MARS”) plan, the Commission adopts an average of state rates for captioned telephone service and applies this rate to interstate CTS and to Internet based CTS. The logic behind this approach is compelling because the majority of states place their intrastate CTS service contracts up for bids and award their contract to the lowest qualified bidder. Since costs for CTS should not differ based on intrastate versus interstate service, it is reasonable to assume that the MARS rates are the rates that would prevail for interstate IP CTS were it possible for the FCC to set an IP CTS rate through competition.

Sorenson proposes to junk future rate setting for IP CTS, now based on the competitive based MARS plan, and substitute instead a plan based on rate caps similar to what the Commission uses to set rates for the IP Relay service. Under Sorenson’s plan, the yearly rate would be decreased by ½ of a percent per year to account for supposed increased efficiency and would be increased by inflation and any exogenous costs. Sorenson Petition at 7-8. Sorenson’s plan would run for three years and apparently would then require the Commission to once again figure out how to compensate IP CTS. *Id.* Although junking MARS for setting future rates, to set the initial price cap rate, Sorenson relies on an average of the MARS rates for 2008, 2009, and 2010. *Id.* at 8-9 Sorenson suggests that adopting its proposal would result in savings to the Interstate TRS Fund and give providers certainty in rates over the three year period that the plan would be in effect.

It is not at all clear that Sorenson’s plan has any tangible benefits other than to lock in a rate that profits Sorenson. To be sure, the plan would achieve a modest per minute rate reduction in the

IP CTS rate from its present level, but inflation and exogenous costs may very well wipe those savings out. Moreover, the relation to present costs of the MARS rate from three to five years ago is not at all apparent. By contrast, when the FCC adopted a price cap regime for IP Relay it set the initial rate at the most recent IP Relay rate. That at least imbued the IP Relay price cap rate with a degree of rationality. Sorenson's proposal lacks any degree of rationality. By contract, Sorenson admits that the MARS formula has resulted in reasonable IP CTS rates. *Id.* at 9.

What Sorenson's proposal does do is remove the advantage of a competitively set rate and set the IP CTS rate arbitrarily. It is true that the Commission need not set a perfect rate, but a reasonable rate has to be set based on reason and not arbitrariness. MARS results in a reasonable rate as Sorenson admits; its price cap proposal results in an arbitrary rate.

What really appears to be behind the Sorenson rate proposal is misdirection. Sorenson is responding to the Commission's institution of CG Docket 13-24, which looks to curb marketing and operational abuses by IP CTS providers, particularly Sorenson itself. Sorenson is attempting to misdirect the Commission's attention to the IP CTS rate level, rather than to the bogus minutes of use Sorenson has created by its abusive marketing and operational practices.

In its *Order and Notice of Proposed Rulemaking* ("Order") FCC 13-13 (Jan. 25, 2013) the Commission took several interim steps to address certain abusive practices related to the provision and marketing of Internet Protocol Captioned Telephone Service ("IPCTS") that threatened to exhaust the Interstate Telecommunications Relay Service Fund ("TRS Fund"). Specifically, the *Order* temporarily (1) prohibited all referral fees for rewards programs and any other form of direct or indirect inducements for consumers to subscribe to, use, or encourage subscription or use of, IPCTS; (2) required each IPCTS provider (i) to register each new IPCTS user, (ii) to obtain from each new user a self-certification that the user has a hearing loss that

necessitates IPCTS to communicate in a manner that is functionally equivalent to communication by conventional voice telephone users, and (iii) where the consumer accepts IPCTS equipment at a price below \$75 from any source other than a governmental program, to also obtain from the user certification of hearing loss from an independent, third party professional; and (3) requiring IPCTS providers to ensure that equipment and software used in conjunction with their service have a default setting of captions off at the beginning of each call, so that the consumer must take an affirmative step to turn captions on each time the consumer wishes to use IPCTS. *Order* at 1-2.

Since the FCC's release of the *Order*, Sorenson's emphasis has been on avoiding the bulk of those safeguards and continuing the abusive practices that led to the issuance of the order in the first place. Sorenson's submissions in this docket clearly show its intransigence at curbing any of its abusive practices. For example, Sorenson wants to continue to pay referral fees to customers despite that the Commission outlawed this practice some eight years ago. Comments of Sorenson Communications Inc. and CaptionCall, LLC at 9-16 (February 26, 2013). *See Telecommunications Relay Services*, 20 FCC Rcd 1466, 1469 (2005) ("2005 Financial Incentives Declaratory Ruling"). *See also Federal Communications Commission Clarifies that Certain Telecommunications Relay Services (TRS) Marketing and Call Handling Practices are Improper and Reminds that Video Relay Service (VRS) May Not be Used as a Video Remote Interpreting Service*, 20 FCC Rcd 1471 (CGB 2005).. Sorenson wants to continue to have its phones default to "captions on" despite the obvious danger that captioning would be supplied to persons not needing the service at the expense of the TRS Fund. Comments of Sorenson Communications Inc. and CaptionCall, LLC at 28-30. Sorenson does not want to obtain third-party certifications from persons to whom it provides subsidized equipment, thus again risking that

persons not needing IP CTS would be using the service. *Id.* at 22-24. Indeed, Sorenson admits that it has failed to implement the Commission's mandate to re-default its devices to "captions off" and now seeks a waiver for that failure. *See* Emergency Petition for Waiver (March 7, 2013). One wonders why the Commission is allowing Sorenson to even remain an IP CTS provider at this point.

Given the above, it is plainly evident that Sorenson's rate cap proposal is simply designed to deflect the Commission's attention from Sorenson's own efforts to continue its abuse of the IP CTS service.

Even beyond that, Sorenson's rate cap scheme should be rejected because it threatens to entrench Sorenson as the dominate IP CTS provider. The Commission has seen this scenario before. In VRS, Sorenson gave away VRS equipment and engaged in a variety of schemes to limit the ability of its customers to use the equipment with the service of any other provider. Here, Sorenson gives away equipment with little or no restrictions over who receives it and ensures the equipment defaults to "captions on." The result is that Sorenson has amassed such a large proportion of IP CTS minutes of use that its cost of service is below that of any its competitors. Apparently Sorenson is seeking to drop the IP CTS rate below the cost of its competitors to choke off competition from other service providers and thus allow Sorenson to gain an even greater dominance of the IP CTS market.

Such a result would serve to deny consumers the advantages of service competition. A monopolist has no incentive to improve its service. Its sole incentive is to maximize its profits rather than to innovate to improve its service to the public.

For these reasons, the Commission should deny Sorenson's Petition. The Commission should not be distracted from reigning in the abuses Sorenson itself has perpetrated in the course of

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providing IP CTS. The Commission should make permanent the temporary safeguards enacted in January to address Sorenson's abusive practices. And IP CTS rates should continue to be set by the competition-based MARS methodology.

Respectfully submitted,

MIRACOM USA, INC.

By /s/
George L. Lyon, Jr.
Its Counsel

Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1500
McLean, Virginia 22102
202-857-3500
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